

REMARKS/ARGUMENTS

Claims 1 to 21 are pending in this application and are subject to restriction. Applicants are herein amending claims 1, 2 and 9 and adding new claim 22.

Amendments to the Claims

Applicants are herein amending claim 1 to add the conjunctions "and" in the listing of the substituents and an "or" in the list of Q radicals. Applicants are herein amending claim 2 to delete the second duplicative  $-C(=Z)$ -aryl radical. Applicants are herein amending claim 9 to present it as an independent claim.

Applicants are herein adding new claim 22 directed to the process of claim 15, further comprising the step of converting said compound of formula (I'), stereochemically isomeric form, metal complex, quaternary amine or *N*-oxide form thereof, into a different form of compound of formula (I'), stereochemically isomeric form, metal complex, quaternary amine or *N*-oxide form thereof. Support for the amendment is found, *inter alia*, in original claim 15.

Applicants respectfully submit that the amendments to the claims are ministerial in nature; do not introduce new matter; and are fully supported by the specification, as originally filed.

Restriction Requirement

Restriction has been required under 35 U.S.C. § 121 between:

**Group I** Drawn to monoazine compounds where  $-a^1=a^2=a^3=a^4$ - in formula I forms a **monoazine** ring (a-2, a-3, a-4 and a-5) and Q = 7-8 membered ring with 1-2 nitrogens [applies to claims 1-2 (in part), 5, 6, 8-15 (in part) and 18-21 (in part)]

**Group II** Drawn to monoazine compounds where  $-a^1=a^2=a^3=a^4$ - in formula I forms a **monoazine** ring (a-2, a-3, a-4 and a-5) and Q

= 5-6 membered ring with 1-2 nitrogens [applies to claims 1-2 (in part), 3, 4, 6, 8-15 (in part) and 18-21 (in part)]

**Group III** Drawn to monoazine compounds where  $-a^1=a^2=a^3=a^4-$  in formula I forms a **monoazine** ring (a-2, a-3, a-4 and a-5) and Q = **non-heterocyclic ring** (b-1-b4) [applies to claims 1-11 (in part), 15 (in part) and 18-21 (in part)]

**Group IV** Drawn to monoazine compounds where  $-a^1=a^2=a^3=a^4-$  in formula I is a **benzimidazole** ring (a-1) and Q = **7-8** membered ring with 1-2 nitrogens [applies to claims 1-2 (in part), 5, 7, 8-15 (in part) and 18-21 (in part)]

**Group V** Drawn to monoazine compounds where  $-a^1=a^2=a^3=a^4-$  in formula I is a **benzimidazole** ring (a-1) and Q = **5-6** membered ring with 1-2 nitrogens [applies to claims 1-2 (in part), 3, 4, 6, 8-15 (in part) and 18-21 (in part)]

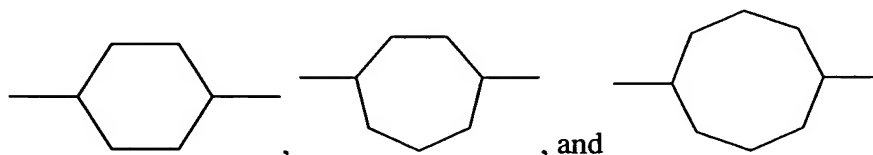
**Group VI** Drawn to monoazine compounds where  $-a^1=a^2=a^3=a^4-$  in formula I is a **benzimidazole** ring (a-1) and Q = **non-heterocyclic ring** (b-1-b4) [applies to claims 1-2 (in part), 8-15 (in part) and 18-21 (in part)]

**Group VII** Drawn to **complex composition** [applies to claims 16-17]

**Group VIII** Drawn to **other forms** of the monoazine compounds (quaternary amine, N-oxide and metal complex) [applies to claims 1-2 (in part), 8-15 (in part) and 18-21 (in part)].

If Group VIII is elected, then there is also a requirement for applicants to a species among quaternary amine, N-oxide and metal.

Applicants wish to note for the record that Groups I to VIII do not cover all of the subject matter of applicants' claimed invention. Specifically, the groups do not cover alternatives where, for example, the compounds are non-heterocyclic rings as



because 5-, 6-, 7- and 8-membered rings of Groups I, II, IV and V are restricted to heterocyclic rings and the non-heterocyclic rings of Groups III and VI are restricted to those of radical b-1 to b-4 and the above-depicted ring structures do not fall within the description of the radicals b-1 to b-4. Furthermore, b-4 includes heterocyclic rings that are not covered by the heterocyclic rings of Groups I, II, IV and V and which are also not covered by Groups III and VI since these groups are directed towards non-heterocyclic rings.

It is alleged in the Restriction Requirement that the inventions of Groups I to VIII are not related to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding technical features. Applicants respectfully traverse.

First, applicants note that no objection for lack of unity was raised during the international phase of the examination of this application. Second, applicants submit Rule 13.1 is fulfilled when there is a technical relationship among the inventions involving one or more of the same or corresponding special technical features (See Rule 13.2 PCT). In the present application, the compounds of the invention are respiratory syncytial virus replication inhibitors and they all possess a *monocyclic heterocycle (R<sup>1</sup> substituent) linked (directly or via a C<sub>1-10</sub>alkanediyl linker) to the N<sub>1</sub> of the imidazole moiety fused with a 6-membered ring*.

According to MPEP § 803, there are two criteria for a proper requirement for restriction between patentably distinct inventions:

- (A) The inventions must be independent (see MPEP § 802.01, § 806.04, § 808.01) or distinct as claimed (see MPEP § 806.05-§ 806.05(i)); and
- (B) There must be a serious burden on the examiner if restriction is required (see MPEP § 803.02, § 806.04(a) to § 806.04(i), § 808.01(a), and § 808.02).

For purposes of the initial requirement, a serious burden may be *prima facie* shown if the examiner shows separate classification, separate status in the art, or a different field of search as defined in MPEP § 808.02. In the subject application, it is alleged that the compounds do

DOCKET NO.: JANS-0027/JAB-1498

PATENT

Application No.: 10/030,202

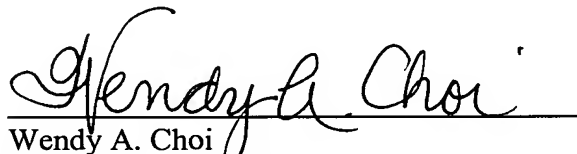
Office Action Dated: April 18, 2003

not share a common technical feature. However, it is respectfully submitted that all of the compounds of the invention share a *common technical feature*, i.e., monocyclic heterocycle ( $R^1$  substituent) linked (directly or via a  $C_{1-10}$ alkanediyl linker) to the  $N_1$  of the imidazole moiety fused with a 6-membered ring. Thus, it is submitted that a *prima facie* case of serious burden has not been established. Accordingly, applicants respectfully request reconsideration of the propriety of the restriction requirement.

Despite the fact that applicants believe that the restriction requirement is improper and in order to be fully responsive to the restriction requirement, applicants elect *with traverse* to prosecute the claims of **Group V** and wish to preserve the right to file divisional applications to the subject matter of the non-elected claims.

If the Examiner is of a contrary view, the Examiner is requested to contact the undersigned attorney at (215) 557-3861.

Date: May 13, 2003

  
Wendy A. Choi  
Registration No. 36,697

WOODCOCK WASHBURN LLP  
One Liberty Place - 46th Floor  
Philadelphia PA 19103  
Telephone: (215) 568-3100  
Facsimile: (215) 568-3439